Section 7266(a)(1) of title 38, United States Code, provides that, to obtain review by the United States Court of Appeals for Veterans Claims (Court) of a final Board of Veterans' Appeals (Board) decision, a person adversely affected by the decision must file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed pursuant to 38 U.S.C. §7104(e). Before its amendment by the Veterans' Benefits Improvements Act of 1996, Pub. L. No. 104–275, 110 Stat. 3322, Section 7104(e) required the Board to promptly mail a copy of its decision to the claimant and the claimant's authorized representative, if any. The Court had construed those provisions as requiring, if a claimant is represented, the accomplishment of both mailings to begin the 120-day appeal period. See Paniag v. Brown, 10 Vet. App. 265, 267 (1997).

As amended by Section 509 of Pub. L. No. 104–275, 110 Stat. at 3344, Section 7104(e) now requires the Board to promptly mail a copy of its written decision to the claimant and, if the claimant has an authorized representative, to mail a copy of its written decision to the authorized representative or send a copy of its written decision to the authorized representative by any means reasonably likely to provide the representative with the decision as timely as if it were mailed first class. Thus, under Section 7104(e) as amended, the Board must still notify a claimant's representative, if any, but such notice may be made by mailing or sending the representative a copy of the decision. Although Section 7104(e) was so amended, no corresponding change was made to Section 7266(a)(1)'s reference to ''mail[ing] pursuant to Section 7104(e).'' See Dippel v. West, 12 Vet. App. 466, 470 (1999) (noting that Congress did not change Section 7266(a) and that Section 7104(e)'s plain meaning would suggest that Section 7266(a)(1)'s reference to ''mail pursuant to Section 7104(e)'' does not cover a decision sent pursuant to Section 7104(e)(2)(B)).

The amendment to former Section 7104(e) without a corresponding change to Section 7266(a)(1) has created an ambiguity. It is not clear when the 120-day appeal period prescribed by Section 7266(a)(1) begins if a claimant is represented and the Board mails copies of its decision to the claimant and the claimant's representative, but mails them on different days. Section 7266(a)(1) does not specify whether the appeal period in that situation begins on the date of mailing to the claimant, on the date of mailing to the representative, on the date of the earlier of both mailings, or on the date of the later of both mailings.

The draft bill would clarify that matter. Section 241 of the bill would amend Section 7266(a)(1) to require, for initiation of Court review of a final Board decision, that a notice of appeal be filed within 120 days after a copy of the decision, pursuant to Section 7104(e), is mailed or sent to the claimant's representative or, if the claimant is not represented, mailed to the claimant. Thus, the 120-day appeal period would begin when the Board mails or sends a copy of its decision to the claimant's authorized representative or, if the claimant is not represented, when the Board mails a copy of its decision to the claimant. We have chosen the date of mailing or sending to the representative, if any, because generally a representative stands in the claimant's place for the purpose of receiving notice of the decision. If the appeal period were to begin on the date of mailing to the claimant, a delay in providing notice of the decision to the representative could compromise the representative's ability to timely advise the claimant. Beginning the appeal period on the date of mailing or sending notice to the representative would maximize the time available to the representative to advise the claimant as to the best course of action.

Section 2(b) of the draft bill would make the amendment to Section 7266(a)(1) apply to any Board decision made on or after the date of enactment of this Act.

No costs or savings would result from enactment of this provision.

SECTION 301—REPEAL OF CAP ON NUMBER OF NON-CAREER MEMBERS OF THE SENIOR EXECUTIVE SERVICE SERVING IN VA

Section 301(a) of the bill would repeal the current statutory limitation applicable to VA on the number of non-career members of the SES that may serve in the Department. Currently, that number may not exceed five-percent (5%) of the average number of senior executives employed in Senior Executive Service positions in the Department during the preceding fiscal year. This provision would not affect the Government-wide ten-percent (10%) limitation that generally applies to other agencies and departments. Section 301(b) would also make conforming amendments to 38 U.S.C. 709.

The Department would greatly benefit from being able to avail itself further of the experience and expertise of executive-level professionals from the private sector, as we restructure fundamental Departmental processes to improve the timely delivery of both health care services and benefits to veterans. The proposed flexibility in staffing would better position VA to increase its knowledge of successful private sector business practices, identify those that have application to VA, and successfully implement them. This, in turn, would enable VA to better meet the expectations of the beneficiaries of VA's programs. The proposal is consistent with the Government's policy of partnering with the private sector to improve Government performance.

VA would remain subject to the ten-percent (10%) Government-wide limitation on non-career SES positions, which OPM administers. The current five-percent (5%) cap on the number of non-career members of the Senior Executive Service is applicable only to VA. While mindful and appreciative of Congress' intention to limit policitization of the Department when it established VA as an Executive Department in 1988, we nonetheless believe that the number of non-career SES members appointed to VA positions should be based on the actual current leadership needs of the Department, as determined by the Administration, subject to the ten-percent (10%) Government-wide limitation. There would be no costs associated with enactment of this provision.

SECTION 302—REPEAL OF PRECEDING-SERVICE REQUIREMENT FOR VA DEPUTY ASSISTANT SECRETARIES

Section 302 of the draft bill would repeal section 308(d)(2), which now requires at least two-thirds of VA's Deputy Assistant Secretaries (DAS's) to have served continuously for five years in the Federal Civil Service in the Executive Branch immediately prior to their appointments. This requirement was established in 1988 to maintain the institutional memory and the Department's tradition of career service. However, this limitation has, in practice, proven to be overly prescriptive. It prevents utilization of highly competent people not meeting the criteria. Because the stringent continuous five-year service requirement applies to all but one-third of the DAS positions, it has required VA to utilize these limited ''non-career'' DAS slots for ''career'' appointees who are not political appointees but who simply fail to meet the service requirement. This includes career employees who have moved from the private sector, within the last five years. This limits the pool of candidates from which the Secretary may select his leadership team. We recommend eliminating the existing service requirement. VA could establish its own standards for these high-level positions, addressing Congress' original concerns of institutional memory and the tradition of career service while still providing needed flexibility for selecting the best-qualified persons.

No costs are associated with enactment of this provision.

SECTION 303—REVOLVING SUPPLY FUND AMENDMENTS

Section 303 would expand the services of the Revolving Supply Fund (38 U.S.C. §8121), to permit the Department of Defense (DOD) to enter into interagency agreements with the Revolving Supply Fund (Supply Fund) for the procurement of certain items and services under the purchase authority of the Supply Fund. Purchases would be limited to medical items and services, e.g., pharmaceuticals, medical/surgical supplies, equipment, and systems and consulting services. Currently, only offices funded by VA appropriations may purchase under that authority. DOD and other Federal agencies enter into interagency agreements with the Supply Fund under the Economy Act (31 U.S.C. §1535).

Congress traditionally has favored consolidated purchases because the increased buying power provides additional procurement leverage and resulting cost savings. Most recently, Congress, in §210 of the Veterans Millennium Health Care and Benefits Act (P.L. 106–117), required VA and DOD to jointly report on the cooperation between the two Departments in procuring pharmaceuticals, medical supplies and equipment. It is clear that Congress holds VA and DOD accountable for achieving efficiencies through the consolidation of contracting and logistics responsibilities.

The legislation, if enacted, would provide additional incentives for DOD to purchase medical items and services directly or through joint procurements from the Supply Fund, e.g., the ordering agencies' obligations remain payable in full from the appropriation initially charged irrespective of when performance occurs; and VA Supply Fund program managers are better able to negotiate contracts for bona fide high priority items because frantic year-end spending is eliminated.

The enactment of this proposal would not result in any cost to VA. The Supply Fund operates entirely upon fees assessed for services rendered.

SECTION 304—REDEFINITION OF ''MINORITY GROUP MEMBER'' IN 38 U.S.C. §544(d)

Section 306 is a technical amendment to 38 U.S.C. §544(d) to change the definition of minority veterans to make it conform to the new Race & Ethic Standards used in Federal statistical reporting and in the 2000 U.S. Census. The amendment would not change eligibility or entitlement to existing or future benefits. No costs would result from enactment of this proposal.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 95—PROVIDING FOR CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE AND A CONDITIONAL ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following current

resolution; which was considered and agreed to:

S. CON. RES. 95

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Tuesday, January 29, 2002, it stand recessed or adjourned until noon on Monday, February 4, 2002, or until such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Tuesday, January 29, 2002, it stand adjourned until noon on Monday, February 4, 2002, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2728. Mr. THOMAS submitted an amendment intended to be proposed by him to the bill H.R. 622, to amend the Internal Revenue Code of 1986 to expand the adoption credit, and for other purposes; which was ordered to lie on the table.

SA 2729. Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2730. Mr. SPECTER (for himself and Mr. SCHUMER) submitted an amendment intended to be proposed to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra; which was ordered to lie on the table.

SA 2731. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2732. Mr. SMITH of New Hampshire proposed an amendment to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra.

SA 2733. Mr. SMITH of New Hampshire proposed an amendment to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra.

SA 2734. Mr. SMITH of New Hampshire proposed an amendment to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra.

SA 2735. Mr. SMITH of New Hampshire proposed an amendment to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra.

SA 2736. Mr. SESSIONS (for himself, Mr. ALLEN, Mr. SMITH of New Hampshire, Mr. HUTCHINSON, and Mr. BROWNBACK) proposed an amendment to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra.

SA 2737. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2738. Mrs. HUTCHISON (for herself and Mr. GRAMM) submitted an amendment intended to be proposed by her to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2739. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2740. Mr. GRAMM (for himself, Mr. MILLER, Mr. KYL, and Mrs. HUTCHISON) submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2741. Mr. GRAMM (for himself, Mr. MILLER, and Mrs. HUTCHISON) submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2742. Mr. GRAMM (for himself, Mr. MILLER, and Mrs. HUTCHISON) submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2743. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2744. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2745. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2746. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2747. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2748. Mr. GRAMM submitted an amendment intended to be proposed by him to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2749. Mr. GRAMM (for himself, Mr. MILLER, Mr. KYL, and Mrs. HUTCHISON) submitted an amendment intended to be proposed to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra; which was ordered to lie on the table.

SA 2750. Mr. GRAMM (for himself, Mr. MILLER, and Mrs. HUTCHISON) submitted an amendment intended to be proposed to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra; which was ordered to lie on the table.

SA 2751. Mr. GRAMM (for himself, Mr. MILLER, and Mrs. HUTCHISON) submitted an amendment intended to be proposed to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra; which was ordered to lie on the table.

SA 2752. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra; which was ordered to lie on the table.

SA 2753. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra; which was ordered to lie on the table.

SA 2754. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra; which was ordered to lie on the table.

SA 2755. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra; which was ordered to lie on the table.

SA 2756. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra; which was ordered to lie on the table.

SA 2757. Mr. GRAMM (for himself and Mrs. HUTCHISON) submitted an amendment intended to be proposed to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra; which was ordered to lie on the table.

SA 2758. Mr. KYL (for himself, Mr. GRAMM, Mr. ENSIGN, Mr. NICKLES, and Mr. HUTCHINSON) proposed an amendment to amendment SA 2698 submitted by Mr. DASCHLE and intended to be proposed to the bill (H.R. 622) supra.

SA 2759. Mrs. HUTCHISON (for herself and Mr. GRASSLEY) submitted an amendment intended to be proposed by her to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2760. Ms. COLLINS (for herself, Mr. WARNER, and Ms. LANDRIEU) submitted an amendment intended to be proposed by her to the bill H.R. 622, supra; which was ordered to lie on the table.

SA 2761. Ms. COLLINS (for herself, Mr. WARNER, and Ms. LANDRIEU) submitted an amendment intended to be proposed by her to the bill H.R. 622, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2728. Mr. THOMAS submitted an amendment intended to be proposed by him to the bill H.R. 622, to amend the Internal Revenue Code of 1986 to expand the adoption credit, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. MODIFICATIONS TO SMALL ISSUE BOND PROVISIONS.

(a) INCREASE IN AMOUNT OF QUALIFIED SMALL ISSUE BONDS PERMITTED FOR FACILITIES TO BE USED BY RELATED PRINCIPAL USERS.—

(1) IN GENERAL.—Clause (i) of section 144(a)(4)(A) (relating to $10,000,000 limit in certain cases) is amended by striking ''$10,000,000'' and inserting ''$20,000,000''.

(2) COST-OF-LIVING ADJUSTMENT.—Section 144(a)(4) is amended by adding at the end the following:

''(G) COST-OF-LIVING ADJUSTMENT.—In the case of a taxable year beginning in a calendar year after 2002, the $20,000,000 amount under subparagraph (A) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.''.

(3) CLERICAL AMENDMENT.—The heading of paragraph (4) of section 144(a) is amended by striking ''$10,000,000'' and inserting ''$20,000,000''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to—

(A) obligations issued after the date of the enactment of this Act, and

(B) capital expenditures made after such date with respect to obligations issued on or before such date.

(b) DEFINITION OF MANUFACTURING FACILITY.—

(1) IN GENERAL.—Section 144(a)(12)(C) (relating to definition of manufacturing facility) is amended to read as follows: